

Amendment

Serial No. 10/088,497

Attorney Docket No. 020181

REMARKS

Claims 1-10 are pending. Claims 1 and 3 are amended.

Claims 1 and 2 were rejected under 35 U.S.C. §102(b) as being anticipated by **Chen et al.**

Favorable reconsideration of this rejection is earnestly solicited.

Claim 1 has been amended to specify that the means for periodically replacing the washing liquid includes a discharge means for discharging washing liquid through a lower part of the washing liquid tank. See page 7, lines 22-24, page 9, lines 2-9 and page 12, lines 13-15 of the present specification.

In amended claim 1, the washing liquid is periodically discharged from washing liquid tank through the discharge passage. The purpose of this periodic discharge is to remove harmful substances contained and accumulated in the washing liquid and replace the discharged washing liquid with a fresh washing liquid supplied into the washing liquid tank.

In **Chen et al.**, hot water tank 300 has a line for hot water to a building. However, the line is not a discharge passage. In **Chen et al.**, harmful substances are removed from the air and are contained and accumulated in the water tank 300 and water-soluble components are discharged with the hot water through the line to the building. However, water-insoluble harmful substances are not discharged and they are accumulated in the water tank. Therefore, even if fresh water is supplied into the water tank, the supplied water is contaminated by the accumulated harmful substances and the humidified air supplied to a fuel cell from the water tank is contaminated which results in deterioration of the fuel cell.

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In the present invention, the discharge means is provided at the lower part of the washing liquid tank so that all of the harmful substances are discharged out of the washing liquid tank and are never accumulated in the tank. Therefore, the purity of the washing liquid in the tank can be maintained and the humidified air supplied to a fuel cell is not contaminated through the water tank and it results in long life and high durability of the fuel cell.

It should also be noted that the claimed means for periodically replacing the washing liquid reserved in the washing liquid tank is not taught by **Chen et al.** That is, the claimed means requires that the washing liquid is periodically replaced. As described in the present specification at page 9, for example, the periodic discharge can be performed according to a calendar day and hour, when the power generation attains a predetermined value, when the power generation time attains a predetermined value, when the system operation time attains a predetermined value, or when the dirt detected by an electric conductivity sensor or the like becomes equal or greater than a predetermined value. There is no teaching or suggestion of such a periodic means described by **Chen et al.**

Claim 5 was rejected under 35 U.S.C. §103(a) unpatentable over **Chen et al.**. Favorable reconsideration of this rejection is earnestly solicited.

As claim 5 depends from claim 1 or 2, the rejection should be withdrawn for the reasons discussed above.

Furthermore, applicant respectfully submits that the decision of *Ex Parte Gray* has been misinterpreted and misapplied.

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In *Ex Parte Gray*, the applicants were attempting to claim a human nerve growth factor free from impurities. The purity of this growth factor was insufficient to render the claimed compound unobvious.

In the instant application, the claims are not directed at a purified compound. Claim 5 recites a fuel cell apparatus, not a purified chemical compound. If claim 5 claimed the water itself, then the Examiner's rejection may have merit. However, claim 5 claims an apparatus which is supplied with "treated water." In claim 5, the "treated" water itself is not being claimed, only its use in a fuel cell apparatus. Thus, *Ex Parte Gray* does not apply.

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gyoten et al. (U.S. Patent No. 6,638,655) in view of JP 6-296817 (JP '817). Favorable reconsideration of this rejection is earnestly solicited.

In response to the previous argument that **Gyoten** only discloses a washing liquid tank (bubbler tank) and not a water tank, the Examiner argues that the steam condenser of **Gyoten** renders obvious the recitation of a "water tank." The Examiner states that "[s]team condensers are often associated with downstream tanks or reservoirs for catching and storing the condensed water." However, the Examiner provides no support for this argument, nor has the Examiner taken Official Notice of this fact. It is never proper for an Examiner to rely on so-called "common knowledge" without documentary evidence. *Zurko*, 258 F.3d at 1358. Thus the Examiner has not established *prima facie* obviousness.

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However, even if **Gyoten** could be broadly interpreted as disclosing a liquid washing tank and a water tank, the combination of references is improper. **Gyoten** contains no suggestion or motivation with regard to replacing the washing liquid according to its dirtiness, as recited by claim 8. Furthermore, **JP '817** contains no teaching or suggestion of a fuel cell of any kind, but rather is directed at an air purifier. The Examiner provides no argument with regard to a suggestion or motivation to combine the references, but rather appears to rely on impermissible hindsight.

Applicants gratefully acknowledge that claims 6, 7, 9 and 10 have been allowed, and that claims 3 and 4 would be allowable if rewritten in independent form. Claim 3 has been rewritten as an independent claim.

For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicant would be desirable to place the application in condition for allowance; the Examiner is encouraged to telephone applicant's undersigned attorney.

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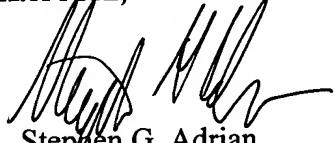
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If this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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